

AMENDED IN ASSEMBLY MAY 29, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 763**

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**Introduced by Assembly Member Buchanan**

February 21, 2013

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An act to add ~~Sections 17.5 and~~ *Section* 48.5 to the Fish and Game Code, and to add Section 64.5 to the Harbors and Navigation Code, relating to aquatic invasive plants ~~and other aquatic pest plants~~.

### LEGISLATIVE COUNSEL'S DIGEST

AB 763, as amended, Buchanan. Aquatic invasive ~~plants and other aquatic pest plants~~: control and eradication.

Existing law designates the Department of Boating and Waterways as the lead agency of the state for the purpose of cooperating with agencies of the United States and other public agencies in controlling certain invasive plants in the Sacramento-San Joaquin Delta, its tributaries, and the marsh, and authorizes the department to furnish money, services, equipment, and other property for the control of those invasive plants.

This bill would additionally designate the department as the lead agency of the state for the purpose of cooperating with ~~other state and local public agencies and with agencies of the United States~~ *state, local, and federal agencies* in identifying, detecting, controlling, and administering programs to manage ~~and, when feasible, eradicate~~ invasive aquatic plants ~~and other aquatic pest plants~~, as defined, in the Sacramento-San Joaquin Delta, its tributaries, and the Suisun Marsh.

The bill would authorize the department, in consultation with appropriate state, local, and federal agencies, and ~~after the~~ *upon concurrence from the* Department of Fish and Wildlife ~~concurs upon following the~~ completion of a specified assessment described in the bill, to take such action it determines is necessary to implement control and, when feasible, eradication measures for those invasive aquatic ~~plants and other aquatic pest plants.~~

This bill would require the department to regularly consult with the United States Department of Agriculture, the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the University of California, and other members of the scientific and research communities, and other state agencies with ~~jurisdiction~~ *authority* over the control of invasive aquatic ~~plants and aquatic pest plants,~~ to determine which species of those plants should be given the highest priority for ~~treatment, management and to determine the best control measures, and determine any feasible eradication control, and when feasible, eradication~~ measures. The bill would also require the department, after consulting with those entities, if it identifies a species of invasive aquatic plant ~~or other aquatic pest plant~~ that may need to be controlled *or eradicated*, to notify the Department of Fish and Wildlife of the potential threat from that invasive aquatic plant ~~or other aquatic pest plant species.~~

The bill would require the Department of Fish and Wildlife, after receipt of that notice, in consultation with other appropriate local, state, and federal agencies, to conduct a risk assessment of that invasive aquatic plant ~~or other aquatic pest plant~~ species to determine whether the plant species presents a threat to the ~~environment or economy~~ *environment, economy, or human health*, as determined after consideration of specified factors. The bill would require the Department of Fish and Wildlife, after completing that assessment, to report its findings to the department so that the department may take any necessary action to control and, when feasible, eradicate an invasive aquatic plant ~~or other aquatic pest plant,~~ as authorized under the bill. The bill would also define the terms, *term* “invasive aquatic plant,” “invasive species,” and “aquatic pest plant,” *plant* for purposes of the Fish and Game Code.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) The spread of invasive aquatic plants ~~and other aquatic pest~~  
4 ~~plants has been~~ is a continuing problem in the Sacramento-San  
5 Joaquin Delta, its tributaries, and the Suisun Marsh.

6     (b) Invasive aquatic plants ~~and other aquatic pest plants can~~  
7 ~~obstruct navigation and pose a threat to fisheries and other~~  
8 ~~ecosystems in the Sacramento-San Joaquin Delta, its tributaries,~~  
9 ~~and the marsh impact the Sacramento-San Joaquin Delta, its~~  
10 ~~tributaries, and the Suisun Marsh by creating navigational~~  
11 ~~obstructions and hazards for boats and other watercraft; impairing~~  
12 ~~recreational activities such as swimming, fishing, and hunting;~~  
13 ~~damaging water supply infrastructure and flood protection systems;~~  
14 ~~altering water quality; and degrading the physical and chemical~~  
15 ~~characteristics of fish and wildlife habitat.~~

16     (c) Coordinated, early-stage ~~treatment~~ response to introductions  
17 of invasive aquatic plants ~~and other aquatic pest plants is~~ critical  
18 ~~in controlling~~ to long-term control and ~~managing~~ management of  
19 those invasive species to protect the state's ~~environment and~~  
20 ~~prevent harm to California's tourism business and economy~~  
21 ~~environment, economy, and human health from harmful impacts~~  
22 ~~of those invasive species.~~

23     (d) Authorizing the Department of Boating and Waterways to  
24 cooperate with other state, federal, and local agencies in the  
25 identification and management of invasive aquatic plants ~~and other~~  
26 ~~aquatic pest plants, instead in-lieu~~ of requiring that the department  
27 undertake legislative action each time ~~an agency identifies a new~~  
28 ~~species of invasive aquatic plant or other aquatic pest plant is~~  
29 ~~identified,~~ would enable the state to ~~more effectively~~ manage and  
30 control invasive aquatic plants ~~and other aquatic pest plants~~ in the  
31 Sacramento-San Joaquin Delta, ~~and~~ its tributaries, and the Suisun  
32 Marsh ~~in a more cost-efficient and effective manner than is~~  
33 ~~currently implemented. Management actions should include the~~  
34 ~~control and maintenance of nonproblematic conditions, and~~  
35 ~~eradication where feasible and cost-effective.~~

36     SEC. 2. ~~Section 17.5 is added to the Fish and Game Code, to~~  
37 ~~read:~~

1     ~~17.5. “Aquatic pest plant” means a plant or alga that is native~~  
2 ~~to California that can cause environmental harm.~~

3     ~~SEC. 3.~~

4     ~~SEC. 2.~~ Section 48.5 is added to the Fish and Game Code, to  
5 read:

6     48.5. (a) ~~“Invasive aquatic plant” means an aquatic plant or~~  
7 ~~alga that is introduced into the state waters and is determined to~~  
8 ~~be an invasive species alga, including its seeds, fragments, and~~  
9 ~~other biological materials capable of propagating that plant or~~  
10 ~~alga, that is usually not native to an area, and whose establishment~~  
11 ~~and spread causes or is likely to cause harm to native species and~~  
12 ~~their habitat; the economy, including the viability of commercial,~~  
13 ~~agricultural, aquacultural, or recreational activities; and human~~  
14 ~~health. Aquatic plants shall be determined to be invasive through~~  
15 ~~the risk assessment required to be completed by the department in~~  
16 ~~consultation with the Department of Boating and Waterways and~~  
17 ~~other state, local, and federal agencies pursuant to subdivision (c)~~  
18 ~~of Section 64.5 of the Harbors and Navigation Code to be an~~  
19 ~~invasive species, as defined in subdivision (b).~~

20     ~~(b) “Invasive species” means an organism that has been~~  
21 ~~introduced into the state through human activity and that is~~  
22 ~~injurious, or likely to cause injury, to the state’s environment or~~  
23 ~~economy.~~

24     ~~SEC. 4.~~

25     ~~SEC. 3.~~ Section 64.5 is added to the Harbors and Navigation  
26 Code, to read:

27     64.5. (a) The department is designated as the lead agency of  
28 the state for the purpose of cooperating with other ~~state and local~~  
29 ~~public agencies, state, local, and federal agencies of the United~~  
30 ~~States~~ in identifying, detecting, controlling, and administering  
31 programs to manage and, when feasible, eradicate invasive aquatic  
32 plants and other aquatic pest plants in the Sacramento-San Joaquin  
33 Delta, its tributaries, and the Suisun Marsh. The department, in  
34 consultation with appropriate state, local, and federal agencies,  
35 may take such action it determines is necessary, ~~after the upon~~  
36 ~~concurrence from the Department of Fish and Wildlife concurs~~  
37 ~~upon following the~~ completion of the risk assessment described in  
38 subdivision (c), to implement control and, when feasible,  
39 eradication measures for invasive aquatic plants and other aquatic  
40 pest plants. Any actions taken to control invasive aquatic plants

1 ~~or aquatic pest plants~~ shall be in compliance with all applicable  
2 laws and regulations and conducted in an environmentally sound  
3 manner.

4 (b) The department shall regularly consult with the United States  
5 Department of Agriculture, the United States Fish and Wildlife  
6 Service, the National Oceanic and Atmospheric Administration,  
7 the University of California, and other members of the scientific  
8 and research communities, as well as other state agencies with  
9 ~~jurisdiction authority~~ over the control of invasive aquatic plants  
10 ~~and other aquatic pest plants~~ to determine which species of those  
11 plants should be given the highest priority for ~~treatment,~~  
12 ~~management and~~ determine the best control ~~measures, and~~  
13 ~~determine any feasible eradication and, when feasible, eradication~~  
14 measures.

15 (c) (1) After consulting with the various entities as required in  
16 subdivision (b), if the department identifies a species of invasive  
17 aquatic plant ~~or other aquatic pest plant~~ that may need to be  
18 controlled ~~or eradicated, if the department~~ shall notify the  
19 Department of Fish and Wildlife of the potential threat from that  
20 plant species. After receipt of that notice, the Department of Fish  
21 and Wildlife, in consultation with other appropriate local, state,  
22 and federal agencies, including, but not limited to, the Department  
23 of Food and Agriculture, the Department of Water Resources, the  
24 State Water Resources Control Board, the Department of Pesticide  
25 Regulation, and the Office of Environmental Health Hazard  
26 Assessment, shall conduct a risk assessment of the invasive aquatic  
27 plant ~~or other aquatic pest plants~~ species identified by the department  
28 to determine whether the plant species presents a threat to the  
29 ~~environment or economy~~ *environment, economy, or human health*.  
30 In making that determination, the department shall take prompt  
31 action to minimize detrimental impacts and costs of management,  
32 and shall consider all of the following:

33 (A) Whether the invasive aquatic plant species ~~or other aquatic~~  
34 ~~pest plant~~ may cause environmental damage, including threats to  
35 the health and stability of fisheries, ~~damage to migratory and other~~  
36 ~~impairment to~~ birds' access to waterways and nesting, *roosting,*  
37 *and foraging* areas, deterioration of water quality resulting from  
38 plant decay, and harm to native plants.

39 (B) Whether the invasive aquatic plant ~~or other aquatic pest~~  
40 ~~plant~~ species may cause harm to the state's economy, infrastructure,

1 or manmade facilities such as state water storage facilities and  
2 pumping operations, by increasing flood risk, threatening water  
3 supplies by blocking pumps, canals, and dams necessitating early  
4 control efforts.

5 (C) Whether the invasive aquatic plant ~~or other aquatic pest~~  
6 ~~plant~~ species may obstruct navigation and recreational uses of  
7 waterways.

8 (2) Based on factors specified in subparagraphs (A), (B), and  
9 (C) of paragraph (1) and any other ~~environmental or economic~~  
10 *environmental, economic, or human health* impacts, the risk  
11 assessment shall specify whether the plant species under  
12 consideration has been determined to be an invasive aquatic plant  
13 ~~or other aquatic pest plant, or neither of those types of plants.~~  
14 Findings from the risk assessment shall be documented in a way  
15 ~~that makes clear~~ *clearly describes* the severity and types of impacts  
16 caused by a plant species determined to be an invasive aquatic  
17 ~~plant or other aquatic pest plant.~~

18 (3) After completing the risk assessment required by paragraph  
19 (1), the Department of Fish and Wildlife shall report its findings  
20 to the department so that the department may take any necessary  
21 action to ~~control, and control and~~, when feasible, eradicate an  
22 invasive aquatic plant ~~or other aquatic pest plant~~, as authorized  
23 under subdivision (a).

24 (d) ~~(4)~~ For purposes of this section, “invasive aquatic plant”  
25 means an aquatic plant ~~or alga that is introduced into the state~~  
26 ~~waters and is determined through the risk assessment completed~~  
27 ~~pursuant to subdivision (c) to be an invasive species, as defined~~  
28 ~~in paragraph (2) alga, including its seeds, fragments, and other~~  
29 *biological materials capable of propagating that plant or alga,*  
30 *that is usually not native to an area, and whose establishment and*  
31 *spread causes or is likely to cause harm to native species and their*  
32 *habitat; the economy, including the viability of commercial,*  
33 *agricultural, aquacultural, or recreational activities; and human*  
34 *health. Aquatic plants shall be determined to be invasive through*  
35 *the risk assessment required to be completed by the Department*  
36 *of Fish and Wildlife in consultation with the Department of Boating*  
37 *and Waterways and other state, local, and federal agencies*  
38 *pursuant to subdivision (c).*

39 ~~(2) For purposes of this section, “invasive species” means an~~  
40 ~~organism that has been introduced into the state through human~~

1 activity and that is injurious, or likely to cause injury, to the state's  
2 environment or economy.

3 ~~(3) For the purposes of this section, an “aquatic pest plant”~~  
4 ~~means a plant or alga that is native to California that can cause~~  
5 ~~environmental harm.~~

6 (e) This section does not require the department to attempt  
7 eradication of ~~any of the plants specified in Section 64~~ *water*  
8 *hyacinth (Eichhornia crassipes) or Brazilian elodea (Egeria*  
9 *densa). Eradication of South American spongeplant (Limnobium*  
10 *laevigatum) populations shall be attempted when detected to the*  
11 *extent feasible.*